

CHAPTER XXVI: WETLANDS PROTECTION

SECTION 1: PURPOSE

- 1.1 The purpose of this Bylaw is to protect resource areas in the Town of Ashburnham by overseeing all activities deemed by the Conservation Commission (hereinafter “Commission”) likely to have a significant or cumulative effect upon the following resource area interests: protection of public and private water supplies, protection of groundwater supply, flood control, storm damage prevention, prevention of pollution, protection fisheries, and protection of wildlife habitat, as identified in the Wetlands Protection Act M.G.L. c.131 s.40
- 1.2 It shall be the responsibility of the Conservation Commission to administer the protection of all wetlands within the geographical boundaries of the Town of Ashburnham, as defined in the Massachusetts Wetlands Protection Act, M.G.L. c.131, s.40, and enforce all provisions of this Bylaw as described below and adopt regulations for administering this Bylaw.

SECTION 2: JURISDICTION

- 2.1 Except as permitted by the Commission or as provided by this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands
subject to flooding or inundation by groundwater or surface water; and, lands within 200 feet of a perennial river or stream, (hereinafter “resource areas”).
- 2.2 Consistent with M.G.L. c.131 s.40 310 CMR 10.02, any activity other than minor activities identified in 310 CMR 10.02(2)(b)1 proposed or undertaken within 100 feet of a resource area (hereinafter called the Buffer Zone) which, in the judgment of the Commission, will alter a resource area is subject to regulation under this Bylaw, and requires the filing of an application with the Commission.

SECTION 3: WAIVERS

- 3.1 Strict compliance with this Bylaw may be waived when, in the judgment of the Conservation Commission, such action is in the public interest and is consistent with the intent and purpose of the Bylaw. Any request for a waiver must be submitted to the Commission in writing. The waiver shall be presented at the time of filing along with a written justification stating why a waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw.

SECTION 4: EXCEPTIONS

- 4.1 Pre-existing activities or structures not meeting the requirements set forth in this Bylaw need not be discontinued or removed but shall be deemed to be

nonconforming. No new activity shall be commenced and no new structure shall be located closer to the edge of wetlands than existing non-conforming like activities or structures, but the Commission may permit new activity or structures as close to the edge of a resource area if it finds that such activity or structure will not affect the interests protected by the Bylaw no more adversely than the existing activity or structure.

- 42 The permit and application required by this Bylaw shall not be required for work on any pre-existing lot when the alteration is required to protect public health and safety, provided that the applicant receives a Determination of Negligible Impact from the Commission as described in Section 5.
- 43 The permit and application required by this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public. An emergency project shall mean any project certified to be any emergency by the Ashburnham Conservation Commission or its agents within 24 hours of notice. Work necessary to abate the emergency shall proceed provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work, provided that the Commission certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of commencement of said emergency project a permit application shall be filed with the Commission for review as provided in the Bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

SECTION 5: APPLICATIONS

- 5.1 Written application shall be filed with the Commission to perform activities affecting resource areas protected by this Bylaw. The application, formally known as the Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation, shall include such information and plans as are deemed necessary by the Commission to describe all resource areas and/or proposed activities and their effects on the resource areas protected by this Bylaw. No activities shall commence without receiving and complying with a permit, formally known as an Order of Conditions or Conditions imposed on a Negative Determination of Applicability, issued pursuant to this Bylaw.
- 52 Any person may request, in writing, that the Commission review a minor activity, as defined in the Regulations of the Commission, for a Determination of Negligible Impact. The Commission shall review the request at a public hearing within 21 days from receipt of the request. In order to approve the request, the Commission must find that the proposed activity will have negligible or no impact on a resource area. A Request for Determination of Negligible Impact is decided upon at the sole discretion of the Commission, can be denied for good cause including failure to submit

information requested by the Commission and can only be approved by a *super majority* vote of the Commission members present. A letter shall be sent informing the applicant of the Commission's decision within 21 days of the decision.

- 53 The Commission may accept as the permit application submittal under this Bylaw, the permit applications filed under the Wetlands Protection Act, M.G.L. c.131, s.40 and in accordance with Regulations set forth in 310 CMR 10.00.
- 54 At the time of a permit application submittal the applicant shall pay a filing fee specified in the Regulations of the Commission. These fees shall be made available to and used by the Commission only for the administration and enforcement of the Town of Ashburnham Wetlands Protection Bylaw.
- 55 Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission. The Commission is authorized to require the applicant to pay all reasonable costs and expenses for expert consultation deemed necessary by the Commission to review applications for compliance with this Bylaw and its Regulations. The specific consultant services may include, but are not limited to, performing or verifying, the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; soils analysis, and researching environmental or land use law. The Commission shall make proper provision to continue the hearing until all information is received, but in no case shall this procedure be used so as to cause unreasonable delay.
- 56 The applicant may seek an administrative appeal from the selection of the outside consultant to the Ashburnham Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant chosen by the Conservation Commission has a conflict of interest or does not possess the minimum required qualifications. The minimum qualification shall consist either of an M.S. degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by the Conservation Commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection of the Conservation Commission shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in these rules.
- 57 Failure of the applicant to pay such costs within 21 days after the close of the hearing shall be cause for the Commission to deny the issuance of a Determination or Order of Conditions.
- 58 The Commission may waive a filing fee, consultant fee, and/or costs and expenses for a permit application or Request for Determination filed by a town officer or agency.

SECTION 6: PUBLIC NOTICE AND HEARING

- 6.1 In all respects, public notice and hearings shall be as provided in M.G.L. c.131, s.40, and regulations hereunder.

- 6.2 The Commission in an appropriate case may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L. c.131, s.40 and Regulations 310 CMR 10.00

SECTION 7: PERMITS AND CONDITIONS

- 7.1 In all respects, procedures shall be as provided in M.G.L. c.131 s.40, and regulations hereunder
- 7.2. If the Commission, after a Public Hearing, determines that the activities which are subject to the permit application or the land or water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.
- 73 The Commission is empowered to deny a permit for the applicant's failure to meet the requirements of this Bylaw; to submit necessary information and plans requested by the Commission; to meet the design specifications, performance standards, and other requirements in regulations of the Commission; to avoid or prevent unacceptable significant or cumulative effects upon the wetland resource areas or interests protected by this Bylaw; or where it finds that no conditions are adequate to protect such values and interests.
- 74 The Commission may require in its regulations that the applicant maintain a strip of continuous, undisturbed vegetative cover and a strip of continuous area where no permanent structures or impervious surfaces exist within these areas, unless the applicant presents credible evidence which in the judgment of the Commission the area or part of it may be disturbed without harm to the values protected by this Bylaw.
- 75 A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be extended, provided that a request for an Extension is received in writing by the Commission 30 days prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land, their successors or assigns.
- 76 The Commission, in an appropriate case, may combine the decision issued under this Bylaw with the decision issued under M.G.L. c.131, s.40, and regulations hereunder.

SECTION 8: DEFINITIONS

- 8.1 The following definitions shall apply in the interpretation and implementation of this Bylaw.
- 8.1.1 Except as otherwise provided in this Bylaw or in regulations of the Commission, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 s.40) and Regulations (310 CMR 10.00).
- 8.1.2 Buffer Zone – non-wetland areas, immediately adjacent to, and extending in a horizontal direction from any resource area, the activities on which are having or may have a significant or cumulative effect upon wetland values due to factors, such as, but not limited to, soil type, ground cover, slope and project proposed.
- 8.1.3 Resource Area – wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; respected buffer zones associated with the aforesaid resource areas; and, lands within 200 feet of a perennial river or stream.
- 8.1.4 Vernal Pool - a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, for site certified by the Massachusetts Division of Fisheries and Wildlife or where credible scientific evidence is presented demonstrate the area meets the Certification Criteria of The Massachusetts Natural Heritage & Endangered Species Program Vernal Pool Certification Program.

SECTION 9: ENFORCEMENT

- 9.1 In accordance with applicable law, including but not limited to the provisions of M.G.L. c.40, s.21D and 31, the Commission and or Town may enforce the provisions of this Bylaw and the Massachusetts Wetlands Protection Act, restrain violations thereof and seek injunctions and judgments to secure compliance with its Orders of Conditions.
- 9.2 The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- 9.3 The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, non-criminal citations under M.G.L. c.40 s.21D, and civil and criminal court actions. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- 9.4 Upon written request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the

Commission, the chief of police shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in the enforcement of this Bylaw.

- 95 Any person who violates any provision of this Bylaw or Regulations, any Order of Conditions, or any Permit, or Enforcement Order issued thereunder, with or without conditions issued pursuant to it may be punished by a fine in the amount of \$100 per violation, per day. Each day or portion thereof during which a violation continues shall constitute a separate offense; if there is more than one, each condition violated shall constitute a separate offense. The Commission, its agents, officers, employees or any police officer shall be empowered to enforce this Bylaw.

SECTION 10: BURDEN OF PROOF

- 10.1 The applicant for a permit shall have the sole burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this Bylaw. Failure to provide such adequate evidence to the Commission supporting, this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

SECTION 11: APPEALS

- 11.1 At the applicant's request, a decision of the Commission shall be reviewable in the Superior Court in accordance with M.G.L. c.249 s.4., each party independently responsible for its own legal expenses.

SECTION 12: RELATION TO THE WETLANDS PROTECTION ACT

- 12.1 This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. c.131 s.40) and Regulations (310 CMR 10.00) thereunder.

SECTION 13: REGULATIONS

- 13.1 After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw which shall be effective upon its filing with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.
- 132 At a minimum these regulations shall define key terms in this Bylaw not inconsistent with the Bylaw and procedures governing the amount and filing of fees. Said

regulations shall be reviewed by a state certified wetland scientist of the Commission's choosing prior to adoption.

SECTION 14: SEVERABILITY

- 14.1 The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously had been issued.

SECTION 15: SECURITY

- 15.1 In addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed as part of any Permit issued hereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:
- 15.1.1 By a corporate bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit. Such deposit shall be held by the Town Treasurer.
- 15.1.2 By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality, whereby the permit conditions shall be performed and observed before any lot may be conveyed, other than by mortgage deed.

(Adopted 5-6-06 ATM by Art. 12)